

PTO/SB/97 (08-00)

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Attorney Docket No. 53394.000581
Application No. 10/046,554RECEIVED
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1. Substitute Reply to Election/Restriction Requirement (11 pp)
2. Certificate of Transmission (1 pp)

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Application No. 10/046,554
Attorney Docket No. 53394.000581
SUBSTITUTE REPLY TO RESTRICTION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Andrew BAKER)
)
Serial No.: 10/046,554)
)
Filed: January 16, 2002)

Examiner: Michele M. KIDWELL

Group Art No.: 3761

Confirmation No.: 1808

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For: ABSORBENT ARTICLES CONTAINING MULTI-COMPONENT CORE
COMPOSITE AND METHODS FOR MAKING SAME

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

SUBSTITUTE REPLY TO ELECTION/RESTRICTION REQUIREMENT**Introduction**

This Substitute Reply to the June 30, 2004 Restriction Requirement issued by the PTO is provided in response to the Detailed Action mailed on November 1, 2004 in which the Examiner alleged that the Applicant's original Reply of July 29, 2004 was *bona fide*, but not fully responsive for failing to include a claim listing under 37 C.F.R. § 1.121. While the Applicant respectfully disagrees that a claim listing is required under the present circumstances, as explained in the Argument section below, in order to prevent any further delays in the prosecution of the application, the Applicant is submitting this Substitute Reply to the Restriction Requirement providing the requested claim listing.

Argument

Applicant respectfully disagrees that a listing of claims is required in the present circumstances. Section 1.121(c) specifically states that "[e]ach amendment document that includes a **change** to an existing claims, **cancellation** of an existing claim or **addition** of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application." 37 C.F.R. § 1.121 (emphasis added). The present Reply to the Restriction does not "change," "cancel" or "add" any claim, and therefore § 1.121 is not implicated by this Reply.

Advice provided on the United States Patent and Trademark Office website is consistent with this position. In response to a question posted in August of 2003, regarding the Revised Amendment Practice, the Office provides the following guidance:

B1. May I submit a complete claim listing in a reply when I am not making any changes to the claims, such as responding to a restriction requirement or merely arguing a rejection? (posted August 14, 2003)

Yes. Although a **complete claim listing is only required whenever changes are made to any claims**, one may be submitted in a reply to an Office action where no changes are being made. It is beneficial to the examiner (and all viewers of the electronic file) to have the most up-to-date set of claims in the most recent paper submitted by the applicant. Note that the claim listing in this situation would not include any claims with markings or any claims with the status identifiers of (new) or (currently amended).

Revised Amendment Practice: Questions & Answers (FAQs)(emphasis added), at <http://www.uspto.gov/web/offices/pac/dapp/revised121qnas.htm>. The Office's response clearly indicates that it is **optional** to provide a claim listing in a reply to a restriction requirement, but a full listing of claims is **not required** in the reply.

In view of the believed inapplicability of the requirements of § 1.121 to the present Reply, Applicant respectfully requests that any delay in prosecution caused by the issuance of the Detailed Action mailed on November 1, 2004 be credited towards the term of any patents issuing from the present application.

Reply to Restriction

In response to the June 30, 2004 Restriction Requirement, Applicant hereby elects the species of Figure 4 (species 3). Claims 1-24 and 30-48 are believed to read on the elected species and subspecies.

This Reply is believed to be timely filed, and no fees are due. However, should any fees be due with this filing, the Commissioner is hereby authorized to charge any such fees to the undersigned's deposit account no. 50-0206.

The requested listing of claims designating the withdrawn claims as "withdrawn" is provided beginning on page 4.